

MINUTES

WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting to be held in Commissioners Meeting Room,
Third Floor, Historic Court House,
Boonville, IN
Monday, April 12, 2021, 6:00 PM

PLEDGE OF ALLEGIANCE: A moment of silence was held followed by the Pledge of Allegiance.

MEMBERS PRESENT: Amanda Mosiman, Doris Horn, Bryan Flowers, Jeff Willis, Richard Reid, Bill Byers, and Bob Johnson.

Also present were Morrie Doll, Attorney, Molly Barnhill, Executive Director and Katelyn Cron, Assistant Director.

MINUTES: Amanda Mosiman made a motion to approve the February 8, 2021 minutes. The motion was seconded by Doris Horn and carried unanimously.

President Willis said it looks like we have one re-zoning on the agenda tonight. He said the re-zoning will go to, either for or against, as a recommendation to the County Commissioner's at their next month's meeting. He said as we go through these if the applicant and owner would please step up to the podium, there is a sign in sheet and if you could please state your name. Anyone here to rebuttal is welcome to come up and there will be a 20 minute time limit and we ask there are no repeating arguments.

PC-R-21-01: PETITIONER: Chris Gilkey OWNER: Chris A. & Alicia A. Gilkey. To rezone 1.85 acres located 0' SE of the intersection formed by Lincoln Avenue and SR 261 from "A" Agricultural Zoning District to "C-2" Community Commercial Zoning District with a Use and Development Commitment. Ohio Twp 26-6-9 & 27-6-9. *Complete legal on file. (Advertised in the Standard February 25, 2021). Continued from March 8, 2021 meeting.*

Jim Morley Jr, Project Engineer, was present.

President Willis called for a staff report.

Mrs. Barnhill said nothing has changed from last time. She said we have all but one green card from Larry & Connie Charlton, but we do have all the white pay receipts showing they were mailed correctly. She said the lot size is 1.85 acres and the comprehensive plan shows the area to be moderate to high density residential. She said the existing land use is vacant and the surrounding zoning and land use to the south is zoned "A" being First Christian Church of Newburgh. She said to the west is zoned "R-1A" being Green Spring Valley Part 3 Subdivision with single family dwellings, to the north is zoned "R-1A" and "R-O" being Tennyson Terrace Subdivision with single family dwellings and a residential office, and to the east is zoned "A" with a single-family

dwelling. She said if approved, the Use and Development Commitment would limit the “C-2” zoning to all uses except backyard chickens, taverns, bars, nightclubs, and restaurants serving alcoholic beverages, and package liquor stores. She said there is no flood plain and the property has access to Lincoln Road and SR 261. She said the stated use is commercial and it would be in compliance.

President Willis asked anything to add to the staff report.

Jim Morley Jr. said I apologize that last month I was unable to be here, I was out of town and one of the things that was brought up was about the alcohol sales and it being within close vicinity to the church. He said we did some research on that and the state code prohibits alcohol sales from less than 200’ of a church however, for lack of better terms we wanted to put on a belt with that set of suspenders and so we have modified, we have added to our Use and Development Commitment from last time. He said it is number 3 on the Use and Development Commitment and I am going to read the addition to it and I am going to submit that to the Board. He said we have added “No alcohol sales and/or consumption as long as a church is the ad joiner to the south, unless the premises is developed as a residential use; such as homes, townhomes, apartments, or condominiums, then alcohol can be consumed on the premises.” He said this zoning allows for a residential use in it because of the trickle down zoning we have in Warrick County so we cannot prohibit that from happening inside someone’s personal home, but I have the original here. He asked Molly, how many copies of this do you want. He asked do you just want the original.

Mrs. Barnhill said I need the original and the Board would like to see it I am sure.

Jim Morley Jr. said okay, I have multiple copies so here they are. He said so after last month’s meeting I had a conversation with Terry Dayvolt who is on the Elder Board at First Christian Church and worked through the wording to get the wording that was acceptable to them. He said based on my understanding, he talked with some of the Elders there and the language that we have turned in is acceptable to them. He said they wanted to make sure there was never any alcohol sales there, that was an important part for them and so we got together on that and came up with a nice agreement. He said so this is a property seeking commercial zoning at a very busy intersection, about 14,000 cars a day go through that intersection. He said we feel that this is a great use of the property, a great infill project and we ask for your recommendation for approval. He said I can answer whatever questions but I know you guys hashed through it last time. He said I think one of the last ticking points, from my understanding, was just making sure there was no alcohol sold so.

President Willis asked any questions from the Board. He asked any remonstrators here for or against this project.

Attorney Doll asked Terry are you going to amen this or what are we doing here.

Terry Dayvolt, Elder at First Christian Church, was present.

Terry Dayvolt said Mr. Morley and I discussed this and we came to the agreement that is before you now, that we would be okay with this agreement as far as the alcohol is concerned. He said as

a matter of fact, Jim and I basically sat down and this is what we came up with. He said we want the Gilkey's to be able to use their property the way they intend for the property to be used. He said it is in your hands, not in my hands. He said as far as that goes we are putting an amen on it so, so be it.

President Willis asked any other questions from the Board.

Jim Morley Jr. said for the record, that is the first amen I have ever got in a Planning Commission meeting.

President Willis asked any other questions from the Board, if not I will entertain a motion.

Bob Johnson made a motion to give a positive recommendation to the County Commissioner's for final approval. The motion was seconded by Doris Horn. Board members in favor were Bill Byers, Jeff Willis, Bob Johnson, Bryan Flowers, Amanda Mosiman. Board members opposed were Richard Reid.

OTHER BUSINESS:

Complaint: Newburgh Dollar Store – 6933 Sharon Rd. Property found to be in violation of their "C-1" Neighborhood Commercial Zoning with a Use and Development commitment.

Mrs. Barnhill said you have a copy of the complaint in your packets, along with some pictures and the letter I sent. She said there was a complaint filed back in December. She said it is about the Dollar General on Sharon Road and SR 66, the new Dollar General in Newburgh. She said there zoning was done with a Use and Development Commitment and there is a copy of that in your packets as well. She said the Use and Development Commitment stated that the property was to have a berm with giant trees on the earth and berm. She said other specifications were that they were 10' apart and offset 8'. She said the owner shall have the obligation to maintain and replace the trees within 4 months of death or other destruction. She said (F) in their Use and Development says that dumpsters shall be covered and enclosed in gated fencing. She said the property shall be free of trash accumulation, if not contained in proper reciprocals. She said there are pictures in your packets showing what they are referring to in the complaint. She said in the complaint they state that they have tried talking with a manager and they have not had any luck and there were some trees and they have failed to replace them, the irrigation system broke and was not fixed causing the trees to die, they were removed July 17, 2020, the contract stipulates that they would be replaced within 4 months which would have been November 17, 2020. She said they brought this to the attention to the manager and they told them they would have to fight with Dollar General tooth and nail. She said it goes on about the fence and I don't know how we can get into the construction of the fence but they say it is not very well built. She said so January 4th I sent the owners of this property it is LDG Newburgh, they are an office in New York. She said they did call and they said they are going to let the tenant handle it. She said I gave them some time and I went back out there on March 3rd and nothing had been done. She said on March 16th I sent another letter to the company in New York and I sent it to this address on Sharon Road and I have not heard anything, so the last pictures in your packet are the ones we

took last week and nothing has changed. She said I think the people who filed the complaint are here, Jeff and Holly Hobgood.

Jeff and Holly Hobgood, adjacent property owners to Dollar General, were present.

Holly Hobgood said while the Use and Development did not require a fence, the fence that they put up is in disrepair because it was hit by the tornado last year. She said they did come and prop it but it is still wonky and falling over. She said the part about the trees, they have not replaced the trees that died last July because the irrigation system failed for whatever reason. She said there was also a mowing issue, they did not mow for months over there and we had to complain about that and then they finally got somebody to mow regularly. She said they have not mowed at all yet this spring but hopefully they will start doing that I don't know. She said the trash was a little excessive when we first filed the complaint, it is a little bit better but I went out just last week and I picked up a whole garbage bag of trash from our woods and along our property line. She said we would just like for it to look nice, we would like to have trees there that are not dead or dying. She said we would also like the trash taking care of, they do not have trash receptacles outside.

Jeff Hobgood said outside at all.

Holly Hobgood said outside the business, you know when you go to Walmart or whatever there is no place for customers to dispose of trash so I think it would be helpful if they had trash receptacles out there just for customers to take care of their own trash, in a sense. She said that is our complaint, we would just like it to look nice and clean.

Jeff Hobgood said people take their coolers and fill it with bottles of water and throw that plastic under their car and drive off. He said they do it a lot too.

Holly Hobgood said yeah and we get those plastic bags a lot, packages, and...

Jeff Hobgood said this is just something that needs to be taken care of because it gets pretty ratty looking. He said the trees were part of the commitment and they definitely need to fix that because of that.

Holly Hobgood said yeah there are probably about 5 to 9 trees that are really browning. She said I do not know if they will be salvagable or if they will have to be removed as well.

Jeff Hobgood said there are about 12 trees they have already removed and those are the ones we definitely took notice of.

Holly Hobgood said so anything that can be done to enforce the use and development plan would be much appreciated, and we have neighbors that have come too, they see it too and have been to the property.

Attorney Doll said you said the earth and berm wasn't required but I see...

Holly Hobgood said no the fence wasn't, the berm was. She said they built the fence there which was great, I appreciate the fence. She said it just wasn't installed very well. She said they don't have the posts in concrete so when the tornado went through it really pushed it over and then they just came and propped it up and you might see some of the pictures that it is just propped up with 2 by 4's and they left it that way. She said and then there is a ravine, or a retention pond, behind and then trash gets accumulated in their as well. She said I have not gone down there to pick up that trash but I do go to pick up trash when I walk around the property.

Doris Horn asked since they have not responded back to you Molly, do you think possibly have our attorney send him a letter.

President Willis asked is there anyone here from either the Dollar General. He said if you could please come up.

Attorney Doll asked is there anything else from you all (referring to the Hobgood's).

Holly Hobgood said no, that is our complaint.

Adam Carney, Dollar General Representative, was present.

Adam Carney said in regards to the trees, there are 4 missing trees. He said those trees or shrubberies are disease prone and they do die. He said we can get those replaced easily, we are going to replace those this week. He said in regards to the trash, the wind does blow through there and you know some of the trash may be coming through like they spoke of, from the customers. He said putting trash receptacles out for the customers can almost cause more of a problem due to the fact that customers will use it to empty their cars and clean. He said they will put their McDonald's bags in and such and it just becomes like maybe it doesn't make it in the trash and it becomes by the trash. He said what we found, is that it becomes more of a problem with trash cans out front for the customers. He said so I think what we can do is just be good neighbors and do a walk through and clean up the parking lot and just clean up any trash that the customers do leave behind. He said as far as the fence goes, I was there this afternoon and it seems secured, and you had said you went and checked it out (referring to Mrs. Barnhill), the way they did it it is secure and the fence is standing up straight. He said I don't have a problem with taking another look at that. He said I didn't grab a hold of it and shake it and make sure it is secure. He said you know the support mechanism seems to be efficient to hold the fence up right. He said you know the fence is up right and it is a nice looking fence so other than that I think that... well when they then spoke of the grass, I did notice that the grass needed to be cut when I went by there today so I sent it off to our corporate and asked for an update on it so the delay in the shrubberies being replaced is due to just what you spoke of. He said because it is a land lord owned building they go back and forth on who is responsible of course so that takes some time to kind of figure out so what we have decided is we aren't waiting any longer we are just going to replace them. He said if we just have to get with some local people and dig some holes and put some bushes up we are going to do that just to get it solved. He said really we just want to be good neighbors.

President Willis said appreciate hearing that. He asked any questions for him of the Board.

Amanda Mosiman said just a couple things on the arborvitae. She said not that the green giants are my first choice with anything, but that is what was put in with your Use and Development Commitment. She said the green giants are a very specific variety and you will pay a premium for them but the whole point of them, as far as arborvitae goes, they are the top notch no disease, no pests.

Adam Carney said yeah.

Amanda Mosiman said so as far as having the disease issue, no. She said to me it just looks as though these were just ill planted and it was not a great year to plant last year, obviously. She said however this looks more like sun scaled, winter damage, and irrigation issues from a culturalistics perspective.

Adam Carney said yeah, and it could have been the time of year they were planted as well.

Amanda Mosiman said well and how they were planted too, so... but on the one picture that is slime mold so that to me says more wetness than actual dry and that they don't like. She said so yeah whether the irrigation broke and it was dry or whether it was leaking and too wet, either way.

Adam Carney said sure, yeah. He asked can those variety be bought at a local store.

Amanda Mosiman said yes, they are very common.

Adam Carney said okay, got it.

Amanda Mosiman said I would have preferred to have you some more options in that Use and Development Commitment but that is what they went with.

President Willis asked any other questions from the Board.

Bill Byers asked so you are saying you don't want to, you are not going to put any trash receptacles out for people to put trash or collect trash.

Adam Carney said I don't believe it is a good idea. He said we have seen that at other stores and have actually removed them due to the customers actually use it like a car wash and they will overwhelm those cans very, very quickly with the amount of customers we have come through and with the labor model that we have we don't have enough people to constantly empty the trash cans out. He said it almost gives them an area to clean their car out and when it gets full what the customers will do will be put it kind of close to it, on top of it, on the ground, and it makes more of a mess than we would like to have.

Amanda Mosiman said if you are not going to place trash receptacles out then something has to be done, because that is in direct violation of how they said this property would be maintained.

Bob Johnson asked how often do you plan on sending someone out to police this area.

Adam Carney said I think that once a day would be sufficient.

Amanda Mosiman said that would certainly be better than what is happening, probably, I would imagine.

Adam Carney said I mean we are not opposed to putting trash receptacles out there I mean it is something we can do.

President Willis said I think the goal is to just make sure the area stays clean. He said you know we want it to look good for what the customers see but also for what the neighbors see as well. He said both need to be clean.

Adam Carney said yes, I agree.

Doris Horn said if you have time to go out and clean up and pick up surely you would have time to empty a trash receptacle. She said you know the time is still there and it wouldn't look like this. She said this is pretty nasty.

Attorney Doll asked would you like to reschedule for the next month's meeting.

Amanda Mosiman said the way I see it is (B), (D), and (F) and we can't do anything about the fence because a) it wasn't required and b) act of God. She said I mean I don't care if it was in concrete it may or may not have made it through that tornado.

President Willis said right, and once they cut the posts off, I was looking at the posts and thinking well they are far enough down that they should be in the ground, you know.

Bob Johnson said this whole fence could have broke off.

Amanda Mosiman asked we as a Board we cannot do anything right, because it wasn't in the Use and Development Commitment.

Mrs. Barnhill said correct.

Attorney Doll said right.

Mrs. Barnhill said so do you want to give him some time to fix these things and come back in May.

Bob Johnson said I would think...

Doris Horn said I think they should come back next month and if it is not cleaned up then we should go the next step.

Mrs. Barnhill said so for now we want these trees replaced that are dead and...

Doris Horn interjected oh, I think they should replace the trees, they should either pick up the trash or put trash receptacles out, for sure.

Richard Reid said or both.

Amanda Mosiman said if he can get them. She said I do not know about the availability, you may not be able to get them just because of shipments. She said they are late and they may not come at all with how many she needs. She said it could be an issue, I hope it is not, but it could be.

Bill Byers asked trees or trash cans.

Amanda Mosiman said trees, trees, we are talking about trees.

Attorney Doll said well if they are ordered and proof to us could be shown that they are ordered then that might suffice, but they need to be planted within a reasonable time period.

Amanda Mosiman said correct.

Attorney Doll asked Amanda what is the time of year that these types of trees are best to be planted.

Amanda Mosiman said spring, they are best planted in the spring.

Doris Horn said now.

Attorney Doll said okay.

Richard Reid said the owner's also said that the retention basin back there was kind of littered too so you need to get that cleaned up too.

Adam Carney said yeah I'm not even sure that is even part of our property line.

Mrs. Barnhill said that basin is, yes. She said it is a large lot and I can give you a plot plan so you can see the layout, and it shows that basin.

President Willis called for a motion.

Doris Horn asked when is our next meeting.

Mrs. Barnhill said the next meeting is May 10th.

Doris Horn made a motion to allow Dollar General until the May 10, 2021 meeting to either order or plant trees and to get the trash picked up and trash containers out for public use. Richard Reid seconded the motion and it carried unanimously.

Mrs. Barnhill said I will be back out a week before the meeting to take some pictures.

Adam Carney said okay. He asked when is the meeting.

Mrs. Barnhill said May 10th.

Attorney Doll said May 10th, at 6:00, right here.

Adam Carney said okay, gotcha.

President Willis said for some reason if you find you get them ordered and they say it is going to be mid-May or June before the trees come in please let the office know.

Attorney Doll said let Molly know.

Amanda Mosiman said if you need names of companies you can call my office, we are here in the court house.

Mrs. Barnhill asked do you have an email you could write down on that sign-in sheet please and I will email you that plot plan.

Holly Hobgood was speaking from the audience (inaudible)....

Attorney Doll said we don't have any jurisdiction over the fence. He said that is a private, civil matter if it falls on your property. He said it wasn't part of the Use and Development Commitment so we don't have jurisdiction over controlling the fence.

More dictation from the audience between the Hobgood's and Adam Carney.

President Willis said so it will be back again next month.

Attorney Doll said yes, and you all are welcome to come back next month if you wish. He asked is there any other issue about the trees or the trash.

More dictation from audience.

Attorney Doll interjected we do not have a fence ordinance to be generated on how that is to be cared for so we don't, we just don't. He said I would suggest you talk to Dollar General and work with them to try to get it stabilized.

Mrs. Barnhill said if we are going to keep discussing this then I need you all to come up because we are going to have to type these minutes.

Attorney Doll said Amanda, generally these trees do not need a lot of water.

Holly Hobgood said they do need to be watered when they go in though.

Amanada Mosiman said well, to a point. She said these only need an inch of water a week so when we are in a drought, yeah sure but you know these things don't like wet feet. She said if they stay wet you are actually dealing more with root rot then you are with the issue with them dying. She said unless I actually, physically got my hands on them I don't know. She said I am just guessing from pictures at this point, educated guess but guessing.

Holly Hobgood said yeah I don't know what you can do about an irrigation system, of course it wasn't a requirement with the Use and Development.

Amanda Mosiman said but the Use and Development does say that anything has to be replaced after 4 months so anything that does die, if it doesn't get replaced in a timely manner then come back.

Holly Hobgood said okay, thank you.

ATTORNEY BUSINESS:

EXECUTIVE DIRECTOR BUSINESS:

Richard Reid made a motion to adjourn. The motion was seconded by Bob Johnson and carried unanimously. The meeting adjourned at 6:43.

Jeff Willis, President

ATTEST:

The undersigned Secretary of the Warrick County Area Planning Commission does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held April 12, 2021.

Molly Barnhill, Executive Director

Jeff Willis, President